

Falekaupule Act 1997
(Act 8 of 1997)

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FALEKAUPULE ACT 1997
(Act No 8 of 97)

I assent

Sir Tulaga Manuella GCMG MBE
GOVERNOR-GENERAL
Dated the December, 1997

AN ACT to make provision for Falekaupule and Kaupule and for connected purposes.

ENACTED by the Parliament of Tuvalu -

PART 1

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Falekaupule Act 1997.
- (2) This Act shall come into force on such date or dates as the Minister may by notice appoint.
- (3) The Minister may by one or more notices appoint different dates for the coming into force of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires-

“**Aganu**” means the traditional local customs and usages of an island;

“**bye-laws**” means bye-laws made under Part VI of this Act;

“**committee**” includes a committee appointed by a Kaupule under section 35, a committee established under section 36 and any sub-committee ;

“**Committee on Budget and Appropriations**” means a committee of that name appointed under section 36(1);

“**court**” means a court having jurisdiction to hear the matter in question;

“**Failautusi ote Kaupule**” means a person appointed as a Kaupule Secretary under section 99;

“**Falekaupule**” means -

a) the traditional assembly in each island of Tuvalu which, subject to this Act, is composed in accordance with the Aganu of each island; and

b) a Falekaupule established by section 4(1);

“**Falekaupule area**” means the area of authority of a Falekaupule as specified in Schedule 1, and in relation to a Kaupule means the area of authority of the Falekaupule on the island where the Kaupule is constituted;

“**Falekaupule Assembly**” means an assembly convened under section 121;

“**Falekaupule building**” includes an “**Ahiga**”, a “**Maneapa**” and a “**Tausoa**” and means the community meeting house on each island where the Falekaupule meets in accordance with the Aganu of that island;

“**financial year**” means the period from 1st April in one calendar year to 31st March in the following calendar year;

“**Kaupule**” means a Kaupule constituted under section 5;

“**Kaupule office**” means the office premises of the Kaupule on each island;

“**local development plan**” means the plan described in section 122;

“**Minister**” means the Minister of Government responsible for the administration of this Act, except that in Schedule 3 it means the Minister having responsibility for the subject-matter of the relevant function;

“Ofisa Teu Tupe” means the person appointed as Kaupule Treasurer under section 99;

“person entitled to vote in the Falekaupule” means a person who is so entitled according to the Aganu of the respective island;

“Pule o Kaupule” means the person elected to preside over a Kaupule under section 18;

“rate” means a community development tax or other rate levied under Part VIII;

“resident” in relation to a Falekaupule area means, subject to subsection (2), a person who ordinarily resides in that area;

“registered voter” means a person registered as a voter under section 14;

“Staff Guidelines” means guidelines issued by the Minister under section 109;

“standing orders” means standing orders of a Kaupule made under section 31;

“statutory functions” in relation to a Falekaupule or a Kaupule means functions conferred by this or any other Act on Falekaupule, Kaupule and local government councils;

“Tokolua Pule o Kaupule” means a person appointed as deputy to a Pule o Kaupule under section 18(2);

“Ulu Alikī” includes a **“Tupu”**, a **“Ulu Fenua”** and a **“Pule Fenua”** and means the head of the Falekaupule according to the Aganu of the respective island.

(2) For the purposes of determining whether a person is resident in a Falekaupule area, the following rules shall apply -

(a) a person shall not cease to be a resident in a Falekaupule area by reason only of a period of absence of less than 1 year;

(b) a person shall be still held to be a resident of a Falekaupule area who-

(i) not being a public officer, is within Tuvalu but absent from that area in fulfillment of an obligation incurred by him under a contract of employment which provides expressly, or impliedly, for his repatriation to that area upon the termination of the contract or the happening of some earlier event;

(ii) states himself, or is declared after a determination under section 123, to have his domicile in that area, and who is for the time being a public officer serving, or a person regularly employed, within Tuvalu but outside that area; or

(iii) is the spouse or dependent of a person referred to in either subparagraph (i) or (ii) above and is accompanying him while he is so absent, serving or employed, as the case may be; and

(c) in paragraph (b), “domicile” means the place of birth of the person whose domicile is in question, unless that person has a fixed habitation for himself and family in some other place and the intention of making it his permanent home

Application of the Act

3. Subject to section 130, this Act binds the Government.

PART II

ESTABLISHMENT OF FALEKAUPULE AND KAUPULE

Establishment of Falekaupule

4. (1) The Falekaupule listed in Schedule 1 are established and shall have the areas of authority specified in that Schedule in respect of each Falekaupule.

(2) Subject to the provisions of any other Act relating to ownership or rights over land, foreshore, marine life or mineral deposits, the area of authority of every Falekaupule for the purposes of this Act and any bye-laws made under it shall include the internal waters, lagoons and lakes of every island or atoll comprised within that area, and the territorial waters, being the first 12 miles of the territorial sea, adjacent to every such island or atoll.

(3) The Minister may by order amend Schedule 1 in respect of the area of authority of any Falekaupule.

Establishment of Kaupule

5. (1) There shall be in the area of authority of each Falekaupule a Kaupule, which shall be constituted by election as provided for in section 8.

(2) The Kaupule on each island shall be the executive arm of the Falekaupule and shall in the Falekaupule area perform all the functions conferred on the Falekaupule by this or any other Act, except -

- a) the election of a Pule o Kaupule;
- b) the approval of the island budget;
- c) the approval of bye-laws;
- d) the approval of appointments to Kaupule offices; and
- e) such other functions as are conferred exclusively on the Falekaupule, either expressly or by necessary implication.

Incorporation of Kaupule

6. (1) Every Kaupule constituted under this Act shall be a body corporate having perpetual succession and a common seal and shall be capable of suing and being sued and of acquiring, holding and disposing of movable and immovable property.

(2) On the date of commencement of this Part-

- a) every local government council established by section 3 of the Local Government Act shall be disbanded and replaced by a Kaupule, the members of which shall be the elected members of the council until such time as elections are held under Part III;
- b) the real and personal property of every local government council so established and all moneys of every such council shall vest in the Kaupule of the area formerly under that council's authority without conveyance or assignment; and
- c) the officers and employees of every local government council so established, including seconded public officers, shall continue as officers or employees of the Kaupule unless and until such officers are replaced as provided for by this Act or such employment is lawfully terminated by the Kaupule.

Kaupule seal

7. (1) The device or seal described in Schedule 2 in relation to each Kaupule is prescribed as the common seal for each Kaupule respectively.

(2) In the event of a seal not being available for any Kaupule, a rubber stamp bearing the name of the Kaupule shall suffice to authenticate documents made by it or on its behalf.

(3) The seal of the Kaupule shall be kept and used by the Failautusi ote Kaupule, acting under the instructions of the Pule o Kaupule where so required by this Act and otherwise in accordance with the requirements of this or any other Act.

PART III

COMPOSITION OF KAUPULE

Election of Kaupule members

8. Each Kaupule shall have 6 members elected by registered voters in the manner specified in this Part.

Qualifications of Kaupule members

9. (1) Subject to subsection (2), a person shall only be qualified for election as a member of a Kaupule if he is entitled to be registered as a voter in the Falekaupule area of that Kaupule.

(2) A person shall be disqualified for election as a member of a Kaupule who

(a) is a public officer;

(b) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law;

(c) has within 5 years before the date of the appointment or election been surcharged under section 76(1) in an amount exceeding \$200;

(d) is subject to any of the disqualifications specified in section 15(a) and (b);

(e) is disqualified for membership of a Kaupule by any law relating to offences connected with elections;

- (f) is an island magistrate within the meaning of the Island Courts Act;
- (g) is a member of a lands court under section 6 of the Native Lands Act; or
- (h) is a member of the Lands Court Appeal Panel under section 9 of the Native Lands Act.

(3) A person shall not be elected to be a member of a Kaupule without his consent.

Term of office of Kaupule members

10. (1) The term of office of members of a Kaupule shall be 4 years from the date of election unless otherwise provided in this Act.

(2) Subject to subsection (3) any member of a Kaupule may, if qualified, seek re-election for a further term of office.

(3) No member of a Kaupule may be elected for more than 2 consecutive terms.

Tenure of office of Kaupule members

11. (1) Every member of a Kaupule shall, without prejudice to his re-election in accordance with this Act, retire as a member of the Kaupule at the expiration of his term of office under section 10 or earlier if his seat becomes vacant under this section.

(2) The seat of a member of a Kaupule shall become vacant -

(a) if by writing addressed to the Pule o Kaupule he resigns his seat;

(b) if he fails during a period of 3 consecutive months to attend meetings of the Kaupule without having obtained during that period the permission of the Kaupule not to attend its meetings;

(c) if he is appointed to, or to act in, any public office or any office or employment of the Falekaupule or the Kaupule; or

(d) if any circumstances arise that if he were not a member of the Kaupule would cause him to be disqualified for election as such under section 9(2) (a), (b), (c), or (d).

(3) Subject to section 10 (3), any person whose seat as a member of a Kaupule has become vacant may, if qualified, again be elected or appointed as a member of a Kaupule

Decision on questions as to membership

12. (1) Subject to this Act, all questions which may arise as to the right of any person to be or remain a member of a Kaupule shall be referred to and determined by the Senior Magistrate whose decision shall be final.

(2) Where, on presentation of an election petition in accordance with regulations made under section 16, it is shown to the satisfaction of the Senior Magistrate that an election offence has been committed in connection with an election held under this Act, the Senior Magistrate may declare such election void.

Filling of vacancies of members

13. (1) Where a vacancy has occurred among the members of a Kaupule, a new member shall as soon as practicable be elected or appointed or elected to fill such vacancy.

(2) A person elected or appointed to fill a vacancy under subsection (1) shall hold office until the date upon which the person he replaced would ordinarily have retired.

Qualification of voters

14. Subject to section 15, every person who-

- (a) has attained the age of 18;
- (b) is a resident in the Falekaupule area; and
- (c) has paid rates to the Kaupule or has been exempted under section 86(2)(i) or 88,

is entitled to be registered as a voter and, when so registered, to vote at the election of a member of the Kaupule in that area.

Disqualification of voters

15. (1) No person who -

- (a) is serving a sentence of imprisonment;
- (b) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Tuvalu; or
- (c) is disqualified from registering as a voter or voting under any law for the time being in force in Tuvalu relating to offences connected with elections

shall be registered as a voter or, being registered, shall be entitled to vote in an election of a member of a Kaupule.

(2) A voter shall not be entitled to have his name retained on the register of voters for any Falekaupule area if for a continuous period of 12 months he has ceased to be a person resident within such area or if he becomes disqualified for voting under subsection (1).

Regulation of elections

16. (1) The Minister may make regulations for the election of members of a Kaupule.

(2) Without affecting the general powers of subsection (1), the Minister may make regulations on the following matters -

- (a) the registration of voters and the revision of registers of voters;
- (b) the ascertainment of the qualifications of the voters and candidates for an election;
- (c) the method of nominating candidates;
- (d) the holding of elections and the method of voting;
- (e) election petitions; and
- (f) the definition and trial of offences relating to elections and the imposition of penalties for such offences.

First elections

17. (1) Elections of Kaupule members shall be held every 4 years or whenever a seat becomes vacant.

(2) Upon the coming into force of this Part, every *ex officio* member of a local government council shall cease to be such a member but elected members shall continue to hold their seats as if elected to the Kaupule until an election is held under this Part.

(3) The first elections of Kaupule members shall be held on a date or dates to be appointed by the Minister after consultation with each Falekaupule and published in the Gazette.

(4) The date or dates appointed under subsection (3) shall be not later than 12 months from the coming into force of this Part

Election of Pule o Kaupule

18. (1) As soon as practicable after the election of a Kaupule, a Pule o Kaupule shall be elected from among the members of the Kaupule by simple majority

in a secret ballot of persons entitled to vote in the Falekaupule and present in the Falekaupule building.

(2) The Pule o Kaupule, on being elected under subsection (1), shall appoint one of the other members of the Kaupule as Tokolua Pule o Kaupule.

(3) Subject to subsection (4), the term of the Tokolua Pule o Kaupule shall end on the date on which the Pule o Kaupule vacates office for any cause, unless the Tokolua Pule o Kaupule earlier vacates his seat.

(4) For any period during which the Pule o Kaupule from any cause is unable to exercise any of his powers or perform any of his duties, the Tokolua Pule o Kaupule shall exercise such powers and perform such duties.

Functions of Pule o Kaupule

19. (1) The Pule o Kaupule shall be the chief executive of the Kaupule and shall exercise such powers and perform such duties and functions as are provided for by this Act and any other law in relation to a Pule o Kaupule or to the president of a local government council.

(2) Whenever a vacancy occurs in the office of Pule o Kaupule, a meeting of the Falekaupule shall be convened to elect a Pule o Kaupule as provided for in section 18(1).

(3) Subject to subsection (6) a Pule o Kaupule shall vacate office if he -

(a) resigns by writing addressed to the Ulu Alik; or

(b) ceases to be a member of the Kaupule; or

(c) is removed by a meeting of the Falekaupule specially convened to consider the removal of the Pule o Kaupule at which at least ~~two-thirds~~ **a simple majority** of the persons entitled to vote in the Falekaupule and present in the Falekaupule building by secret ballot agree to such removal. *(Amended by Act 7 of 2000).*

(4) Subject to subsection (5), the term of office of a Pule o Kaupule shall be for 4 years from the date of his election:

(5) A person elected to fill a vacancy in the office of Pule o Kaupule under subsection (3) shall hold office until the date when the person he replaced would normally retire.

(6) A Pule o Kaupule shall continue in office until a new one is elected under section 18(1), unless he vacates his office under subsection (3).

(7) A candidate for the office of Pule o Kaupule shall not be present at the meeting of the Falekaupule at which the election of the Pule o Kaupule takes place.

(8) No person shall be elected Pule o Kaupule without his consent.

Notification of names of members

20. (1) The Minister shall appoint a returning officer for each Falekaupule area.

(2) As soon as practicable after an election of members of a Kaupule, the returning officer appointed under subsection (1) shall notify the Secretary in the Ministry responsible for the administration of this Act of the name and term of office of every person elected to be a member of the Kaupule and shall publish such information at the Kaupule office.

(3) As soon as practicable after an election for the office of Pule o Kaupule, the Failautusi ote Kaupule shall inform the Secretary in the Ministry responsible for the administration of this Act of the names and terms of office of the persons respectively elected Pule o Kaupule and appointed Tokolua Pule o Kaupule and shall publish such information at the Kaupule office.

PART IV

MEETINGS AND PROCEEDINGS OF KAUPULE

Number of meetings

21. (1) Subject to subsection (2) and section 22(2), a Kaupule shall meet at such times as the Pule o Kaupule shall determine.

(2) If a Kaupule fails to meet at least once every month, for 3 consecutive months, the Minister, after consultation with the Falekaupule, may suspend the Kaupule, whereupon the provisions of section 50 shall apply.

Convening of meetings

22. (1) The Pule o Kaupule may call a meeting at any time either on his own motion or upon requisition of one half of the members of the Kaupule.

(2) If the Pule o Kaupule refuses to call a meeting of the Kaupule after receiving a written request to do so signed by one half of the members of the Kaupule, or if, without so refusing, the Pule o Kaupule does not, within 2 days after receiving such request, call a meeting to take place within 3 weeks of the date of the request, the person presenting the request may, on such refusal or on the expiration of the 2 days as the case may be, call a meeting of the Kaupule.

(3) At least 7 days before the day of any meeting called under subsection (1) or (2)-

(a) notice of the time and place of the intended meeting shall be published at the Kaupule office and, where the meeting is called by members of the Kaupule, the notice shall be signed by those members and shall specify the business proposed to be transacted; and

(b) summonses to attend the meeting, signed by the Failautusi ote Kaupule, shall be left at the home of every member of the Kaupule, but failure to serve a summons on any member shall not affect the validity of the meeting.

(4) No business shall be transacted at a meeting called by members of a Kaupule other than that specified by them in the notice published under subsection (3)(a).

Presiding at meetings

23. (1) The Pule o Kaupule shall, if present, preside at meetings of the Kaupule.

(2) If the Pule o Kaupule is absent from any meeting of the Kaupule, the Tokolua Pule o Kaupule if present or, in his absence, such member as the members of the Kaupule shall choose, shall preside at the meeting.

Quorum

24. No business shall be transacted at a meeting of a Kaupule unless at least two-thirds of the total number of members of the Kaupule are present.

Conduct of Meetings

25. (1) Unless special conditions make it impractical, every meeting of a Kaupule shall take place in the Kaupule office.

(2) Meetings of the Kaupule shall be open to the public, unless the Kaupule by resolution decides to exclude the public from any meeting or part of a meeting.

(3) The proceedings of any meeting of a Kaupule committee shall not be open to the public unless the Kaupule appointing the committee resolves to admit the public.

Decisions on questions

26. (1) Subject to this Act, all acts of a Kaupule and all questions coming or arising before a Kaupule shall be done and decided by a majority of the members present and voting at a meeting of the Kaupule.

(2) The person presiding at a meeting of a Kaupule shall have an original vote and, in the event of an equality of votes, shall have and exercise a second or casting vote.

(3) The person presiding at a meeting of a Kaupule may on his own initiative, and shall at the request of one third of the members present, order that any question coming before the Kaupule shall be determined by secret ballot.

Breaches of order at meeting

27. (1) At any meeting of a Kaupule, if a member of the Kaupule shows disregard for the authority of the person presiding or abuses the standing orders by persistently or willfully obstructing the business of the Kaupule or otherwise, the person presiding shall direct the attention of the meeting to the incident by naming the person concerned and may suspend such person from the exercise of his functions as a member of the Kaupule for the remainder of the meeting.

(2) In case of grave disorder arising in any meeting of a Kaupule, the person presiding may, if he thinks it necessary, adjourn the meeting without question put or suspend the meeting for a time specified by him.

(3) The person presiding at any meeting of a Kaupule committee may, if he thinks it necessary, exercise the like powers as are conferred upon a person presiding at a meeting of a Kaupule by subsections (1) and (2).

Minutes of meetings

28. (1) Minutes of the proceedings of every meeting of a Kaupule and of every committee shall be entered in books kept for that purpose and shall be read and confirmed or amended and signed by the person presiding at the next meeting of the Kaupule or committee, as the case may be, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) The names of the members of a Kaupule or of a committee present at a meeting of the Kaupule or committee respectively shall be recorded in the minutes.

(3) The Pule o Kaupule shall, in consultation with the Ulu Alikī, arrange that the resolutions passed at any Kaupule meeting are read to the Falekaupule in the Falekaupule building within 14 days of the meeting, and shall record the fact of such reading in the Minutes of the meeting at which the resolution was passed.

(4) Unless the contrary is proved, a meeting of a Kaupule or of a committee, in respect of the proceedings of which a minute has been made and signed as provided by subsection (1), shall be deemed to have been duly convened and held, the members present at the meeting shall be deemed to have been qualified and, in the case of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

Minutes to be open for inspection

29. The minutes of the proceedings of a Kaupule shall at all reasonable times be open to inspection and any person may obtain a copy of or an extract from such minutes on payment of such fee as may be specified by the Kaupule.

Vacancy, etc. not to invalidate proceedings

30. The proceedings of a Kaupule or of any committee shall not be invalidated by reason of any vacancy among its members or the lack of qualifications of any member.

Standing orders

31. (1) The Minister, after consultation with each Falekaupule, may issue in the Tuvalu language model Standing Orders for the regulation of the proceedings and business of Kaupule.

(2) A Kaupule may make standing orders for the regulation of its proceedings and business, not inconsistent with model Standing Orders made under subsection (1), and may amend, vary or revoke such standing orders in a manner not inconsistent with those Orders.

(3) Model Standing Orders made under subsection (1) shall apply to regulate the proceedings and business of any Kaupule which does not make its own standing orders under subsection (2) or in respect of any matter not covered by such orders.

(4) Until standing orders under subsection (1) or (2) are made, a Kaupule shall conduct its meetings in accordance with the normal rules of conduct of local government bodies.

Payment of allowances

32. The Pule o Kaupule and every member of a Kaupule shall be paid monthly out of the revenues of the Kaupule such gratuities and travelling and attendance allowances as may be determined by the Minister, after consultation with each Falekaupule.

Pecuniary interest

33. (1) Subject to subsection (2), if a member of a Kaupule or of any committee has any pecuniary interest, direct or indirect, in any contract or proposed

contract or other matter and is present at a meeting of the Kaupule or of the committee at which the contract or other matter is the subject of consideration, -

(a) he shall disclose such interest to the meeting and not take part in the consideration or discussion of or vote on any question with respect to the contract or other matter; and

(b) if a majority of members present so decide, he shall withdraw from the meeting during such consideration or discussion.

(2) This section shall not apply to an interest in a contract or other matter which a member of the Kaupule or committee may have as a rate-payer or inhabitant of the Falekaupule area.

(3) This section shall apply in like manner to questions on the employment by the Kaupule of an immediate relative of a member, being either a parent, sibling, child or grandchild.

Attendance of non-members

34. The Pule o Kaupule may invite any person to attend and to speak upon any matter at any meeting of the Kaupule, but a person so invited shall not vote upon any matter.

Appointment of committees

35. (1) A Kaupule may by resolution appoint one or more committees, comprised of some or all of its members, for any general or special purpose and may delegate to such a committee any power or function of the Kaupule in respect of the Falekaupule area, except the power of appointing committees, making bye-laws, approving annual estimates, levying a rate or borrowing or lending money.

(2) The chairman and members of a committee appointed under this section, their terms of reference, their term of office and the subject-matter over which the committee is to exercise authority, shall be specified by the Kaupule.

(3) The Pule o Kaupule may invite a person who is not a member of the Kaupule to be a member of a committee appointed under subsection (1) if that person's special knowledge or skill or experience in the subject-matter over which the committee is to exercise authority so justifies.

(4) A committee appointed under this section may, if so authorised by the Kaupule, appoint one or more sub-committees from among its members.

Standing committees

36. (1) Without affecting the general powers in section 35, a Kaupule shall establish standing committees on each of the following subjects -

- (a) Health;
- (b) Agriculture and Fisheries;
- (c) Education;
- (d) Communication, Transportation, and Infrastructure; and
- (e) Budget and Appropriations.

(2) A Kaupule may in accordance with section 35 establish such other standing committees as may be needed in order to carry out its functions.

(3) A standing committee appointed under this section may establish such sub-committees as it thinks fit.

Standing orders for committees

37. (1) A Kaupule shall make and may amend, vary, and revoke standing orders to regulate the activities and proceedings of any committee which it appoints.

(2) Without affecting the general powers of subsection (1), standing orders made under this section shall provide -

- (a) that all acts of a committee shall be done and decided by a majority of members present and voting at a meeting of such committee;
- (b) that the chairman or other person presiding at a meeting of a committee shall, in the event of an equality of votes, have and exercise a second or casting vote; and
- (c) for the quorum, proceedings and place of meetings of a committee.

(3) Standing orders made under this section shall not be inconsistent with the standing orders of the Kaupule made under section 31.

Committees to report

38. Every committee appointed by a Kaupule under this Part shall report its proceedings to the Kaupule whenever required to do so by the Kaupule and in any event within a reasonable time after such proceedings.

PART V

FUNCTIONS OF FALEKAUPULE AND KAUPULE

Duty to discharge functions

39. (1) It shall be the duty of every Falekaupule established by this Act -

(a) to discharge the functions conferred upon Falekaupule by or under this or any other Act; and

(b) generally, through the Kaupule, to maintain order and good government and promote development within the area of its authority.

(2) It shall be the duty of every Kaupule established by this Act -

(a) to discharge the functions conferred upon Kaupule or upon local government councils by this or any other Act; and

(b) to assist the Falekaupule in the performance of its functions by acting as the executive arm of the Falekaupule, as described in section 5,

and for this purpose a Kaupule may exercise all the powers conferred on Kaupule or local government councils by this or any other Act and do such other things as are necessary or desirable and for which it has lawful power.

(3) For the avoidance of doubt, it is hereby declared -

(a) that the conferring of functions on a Falekaupule or a Kaupule or a local government council by this or any other Act does not confer any powers other than those conferred by statute or by the general law; and

(b) that nothing in this section or section 40 confers on a Falekaupule or Kaupule authority to do anything which would be contrary to this or any other Act or any other law.

Functions

40. (1) The general functions of a Falekaupule shall be those set out in Schedule 3.

(2) The Minister may by order amend Schedule 3.

(3) In relation to development the functions of a Falekaupule shall be, amongst other things, -

- (a) to prepare and implement development plans and programs in consultation with the community, government agencies, non-government organisations and other development partners;
- (b) to coordinate and monitor all programs and projects implemented within its area of authority;
- (c) to seek technical advice on policy and project development in accordance with its plans and programs;
- (d) to mobilise the people for development efforts; and
- (e) to ensure the proper management and use of the physical and natural resources in the Falekaupule area.

(4) Any function conferred on a Falekaupule or Kaupule or local government council shall be exercisable over all persons within the Falekaupule area except as is otherwise expressly provided in this Act or in any regulations or bye-laws made under this or any other Act.

(5) The conferring of a function on a Falekaupule does not preclude the performance of that function by the Government where the function can more appropriately be performed by the Government and the Minister shall, in consultation with each Falekaupule, determine which functions should be performed by the Falekaupule and which by the Government.

Prevention of crime

41. It shall be the duty of every Falekaupule and of every Kaupule to use its resources to assist the police in the detection and prevention of crime within the area of its authority.

Power to accept gifts

42. (1) A Kaupule, on behalf of the Falekaupule and with its express approval, may accept, hold and administer any gift of real or personal property for any public purpose or for the benefit of the inhabitants of the Falekaupule area or any part of it.

(2) A Kaupule may execute or cause to be executed any works (including works of maintenance and improvement) incidental to or consequential on the acceptance of a gift of real property under subsection (1).

Fees

43. A Kaupule may charge fees for any service or facility provided by the Falekaupule or the Kaupule in performance of their statutory functions or for any

licence or permit issued by the Kaupule under this Act or under any regulations or bye-laws made under this Act.

Remission of fees etc.

44. A Kaupule may by resolution for good cause remit in whole or in part any fee or charge, other than a fine, imposed under this Act or under any regulations or bye-laws made under this Act and payable to the Kaupule.

Power to contract

45. (1) A Kaupule may enter into any lawful contract for the supply of goods or services necessary for the discharge of its statutory functions or those of the Falekaupule.

(2) With the express approval of the Falekaupule, a Kaupule may enter into joint contracts with one or more other Kaupule whereby the services of third parties can more cheaply or efficiently be secured for the performance of any of the Kaupule's functions.

Insurance

46. A Kaupule may insure all or any of its property against risks of any type and may insure itself and any member, officer or servant of the Kaupule against any liability on account of loss of life or injury, or loss of or damage to property, sustained or caused by any such member, officer or servant and arising out of or in the course of his duty as such member, officer or servant.

Provision of buildings

47. A Kaupule may provide and furnish buildings to be used in performing its functions and for occupation by officers and employees of the Kaupule and by other persons performing the functions of the Kaupule.

Acquisition of land

48. (1) Subject to subsection (2), and with the express approval of the Falekaupule, a Kaupule may, for the purposes of performing its statutory functions or those of the Falekaupule, acquire by purchase, lease, gift or exchange, any land either within or outside the Falekaupule area.

(2) A Kaupule shall not acquire land outside the Falekaupule area without the prior written approval of the Minister.

Powers of public officers

49. (1) The Minister, with the agreement of the Kaupule, may by order direct that specified public officers shall be deemed to be officers of any Kaupule for the purposes of giving effect to and enforcing any bye-laws made by such Kaupule.

(2) Every police officer shall be deemed for the purposes of this section to be an officer of the Kaupule on the island where he is for the time being stationed.

Power to enforce functions

50. (1) If the Minister is satisfied that any Falekaupule or Kaupule has defaulted in the performance of any of its statutory functions, he may make an order declaring the Falekaupule or Kaupule to be in default and may, by the same or any other order -

(a) for the purposes of removing the default direct the Falekaupule or Kaupule to perform such of its functions in such manner and within such time or times as may be specified in the order; or

(b) transfer to such person or body as the Minister thinks fit such functions of the Falekaupule or Kaupule as may be specified in the order.

(2) If a Falekaupule or Kaupule in respect of which an order has been made under subsection (1)(a) fails to comply with any requirement of the order within the time specified in it for compliance, the Minister may make an order under subsection (1)(b).

(3) Where an order has been made under subsection (1)(b) in respect of a Kaupule, the Minister may, by the same or any other order, dissolve the Kaupule or suspend the Kaupule for such period as he thinks fit from the performance of such of its functions as are specified in the order.

(4) The Minister shall not make an order under this section unless -

(a) an investigation has been carried out on behalf of the Minister on the manner in which the Falekaupule or Kaupule is exercising its statutory functions, or specified functions;

(b) the Minister has received a report on the investigation; and

(c) after consideration of the report he is satisfied that the Falekaupule or Kaupule is in default.

Expenses in respect of transferred functions

51. Where any functions of a Falekaupule or Kaupule are transferred to any person or body under section 50(1)(b), the expenses incurred by such body or person in discharging those functions shall be a debt due from the Falekaupule or Kaupule in default to such person or body.

Powers in emergency

52. (1) In the event of any disaster or emergency endangering the lives or properties of persons within a Falekaupule area, the Pule o Kaupule shall, in consultation with the Ulu Aliko, make such decisions and take such steps as may be reasonably necessary to deal with the situation.

(2) In the event of a disaster or emergency endangering the lives or properties of persons within more than one Falekaupule area the Pule o Kaupule in consultation with the Ulu Aliko shall liaise with the National Disaster Committee before making such decisions and taking such steps as may be reasonably necessary to deal with the situation.

PART VI

BYE - LAWS

Bye-laws; general provisions

53. (1) A Kaupule may from time to time make and having made may amend, vary, or cancel bye-laws, having the force of law in the Falekaupule area, for the purpose of carrying out any statutory function of the Kaupule or the Falekaupule.

(2) Bye-laws made under subsection (1) may specify a fine not exceeding \$400 or, in default of payment, imprisonment not exceeding 6 weeks, for any breach of a bye-law and, in the case of a continuing offence, a further penalty not exceeding \$20 for each day on which the offence is continued after written notice of the offence has been given to the offender.

(3) Bye-laws may further provide that, in addition to any penalty as specified in subsection (2), any expense incurred by the Kaupule in consequence of any breach of the bye-laws or in the execution of any work directed by any bye-law to be executed by any person and not executed by such person shall be paid by the person committing such breach or failing to execute such work and shall be recoverable as a civil debt.

(4) Bye-laws may provide for the payment of such fees or charges as are specified in the bye-laws.

(5) Subject to subsection (6), every bye-law shall be read and construed subject to this Act and to any other law for the time being in force in Tuvalu.

(6) Where a bye law makes provision for any matter for which provision is made in any other Act, the bye-law shall not be invalid unless there is a conflict between the provisions of the bye-law and of the Act, in which case the provisions of the Act shall prevail.

(7) Nothing in the Laws of Tuvalu Act shall prevent a Kaupule, when making a bye-law on any topic, from incorporating, repealing, amending or re-stating any customary rules previously in force with regard to that topic.

(8) A bye-law may require acts or things to be performed or done to the satisfaction of a specified person and may empower a specified person to issue orders to any other person requiring acts or things to be performed or done, imposing conditions and prescribing periods and dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

(9) A bye-law may confer upon a Kaupule and any of its officers and employees specified in such bye-law such powers of inspection and inquiry and such powers to execute any work as may be reasonably necessary for the proper carrying out or enforcement of such bye-law.

(10) A bye-law may specify that it shall apply to the whole or any part of the Falekaupule area or to all or any class of persons in such area and, failing such specification, a bye-law shall be deemed to apply to all parts of the Falekaupule area and to all persons in it.

Method of making bye-laws

54. (1) Bye-laws shall be-

(b) in the Tuvalu language;

(b) made by resolution of the Kaupule after approval of the Falekaupule as provided in this section; and

(c) signed by the Pule o Kaupule under the common seal of the Kaupule.

(2) A bye-law may be proposed by any member of the Kaupule, by the Failautusi ote Kaupule, or by the Ulu Aliko and shall be debated in a meeting of the Kaupule.

(3) If agreed by the Kaupule, the proposed bye-law shall as soon as practicable be sent by the Pule o Kaupule to the Ulu Aliko who shall arrange for discussion of it in the Falekaupule within 30 days of receiving it.

(4) If the proposed bye-law is approved in the Falekaupule by a majority vote of the persons entitled to vote in the Falekaupule, with or without amendments, it shall be so endorsed by the Ulu Aliko and returned to the Pule o Kaupule for making in accordance with subsection (1).

(5) If the Falekaupule approves a proposed bye-law with amendments, the Kaupule may make the bye-law as so amended, or the Pule o Kaupule may return it to the Falekaupule with reasons why the amendments are not acceptable, whereupon the Falekaupule may withdraw the amendments or propose new ones.

(6) The procedure described in subsections (4) and (5) may be repeated until agreement is reached between the Kaupule and the Falekaupule, whereupon the bye-law shall be made in accordance with subsection (1).

(7) The Falekaupule may withhold its approval of a proposed bye-law, in whole or in part, only on the grounds that it is prejudicial to public welfare or against the customs and traditions of the people, and the Ulu Aliko shall give the reasons for such decision in writing to the Pule o Kaupule.

(8) A decision under subsection (7) shall not preclude the Kaupule from again proposing a bye-law on the same subject at any time.

(9) The Pule o Kaupule shall, as soon as practicable after a bye-law has been made, arrange for its transmission to the Attorney-General, who shall, subject to subsection (10), cause it to be published on the Government notice-board and in the Gazette.

(10) The Attorney-General may declare any bye-law invalid, in whole or in part, on the grounds that it is inconsistent with this Act or any other Act, and shall advise the Pule o Kaupule accordingly.

Publication of bye-laws

55. (1) Copies of every bye-law shall -

- (a) be deposited at the Kaupule office;
- (b) at all reasonable times be open to public inspection without payment; and
- (c) be provided to any person on payment of such sum as the Kaupule may determine.

(2) Every bye-law shall be published by exhibiting a copy of it at the Kaupule office and subject to section 54(10) shall come into effect on the date of such publication, or on such later date as may be specified.

(3) The Kaupule may take such steps in addition to those specified in subsections (1) and (2) as it thinks appropriate to ensure that all persons likely to be affected by a bye-law are aware of its provisions.

Evidence of bye-laws

56. (1) The signature on a bye-law of the Pule o Kaupule, under the common seal of the Kaupule, shall be evidence, unless the contrary is proved, that the procedure prescribed in section 54 has been followed in respect of it.

(2) A copy of a bye-law purporting to be made by a Kaupule, upon which is endorsed a certificate purporting to be signed by the Pule o Kaupule or the Failautusi o Kaupule stating -

(a) that the bye-law was made and published by the Kaupule in the prescribed manner;

(b) that the copy is a true copy of the bye-law; and

(c) that the bye-law was duly approved by the Falekaupule on a specified date and that it came into operation on a specified date,

shall be admitted in evidence in any Court without further proof, and such certificate shall be evidence of the facts stated in it without further proof and without proof of the hand-writing or official position of the person purporting to sign the certificate.

PART VII

FINANCIAL PROVISIONS AND AUDIT

Establishment of statutory funds

57. (1) Every Kaupule shall set up a general fund into which shall be paid all revenue and other moneys accruing to the Falekaupule under this or any other Act and all revenues or other moneys accruing to the Kaupule (in this Part referred to as “statutory revenues”) and from which shall be paid all expenditures properly incurred by the Falekaupule or by the Kaupule in the performance of their respective functions under this or any other Act (in this Act referred to as “statutory expenditure”).

(2) In receiving moneys accruing to the Falekaupule and in paying expenditure incurred by the Falekaupule, a Kaupule acts as agent for the Falekaupule, but shall not be entitled to be indemnified by the Falekaupule in respect of any such sums.

(3) Each Kaupule may operate such bank accounts as are necessary in order to perform its functions and those of the Falekaupule under this Act or any other Act.

Statutory revenues

58. (1) The statutory revenues of a Falekaupule and the revenues of a Kaupule shall consist of -

- (a) all sums of money formerly vested in any local government council established under section 3 of the Local Government Act within or partly within the Falekaupule area;
- (b) all sums of money appropriated by Parliament for the maintenance and improvement of facilities on the islands and for the local development plan;
- (c) revenue accruing to the Falekaupule or the Kaupule from the following sources -
 - (i) moneys derived from any rate imposed by the Kaupule under this Act ;
 - (ii) moneys derived from permits, dues, charges or fees specified by any bye-law made by the Kaupule;
 - (iii) moneys received from any public utility concern or any service or undertaking belonging to or maintained by the Kaupule;
 - (iv) rents derived from the letting or leasing of any building or land belonging to the Kaupule;
 - (v) any particular public revenue lawfully assigned to a Falekaupule or to a Kaupule;
 - (vii) any sums of money lawfully assigned to a Falekaupule or to a Kaupule by any public corporation ;
 - (viii) interest on investments made under section 70;
 - (ix) moneys borrowed under section 67;
 - (x) moneys granted to the Falekaupule or the Kaupule by way of gift for any public purpose or for the welfare of all or any of the inhabitants of the Falekaupule area;
 - (xi) moneys derived in the Falekaupule area from tax collected under the Landowners Taxation Act ;
 - (xii) registration fees under the Dogs Act payable within the Falekaupule area;
 - (xiii) licence fees under the Licences Act payable within the Falekaupule area;
 - (xiv) notwithstanding section 9 of the Public Finance Act, fees for liquor licences, motor vehicle and driving licences and all other licences issued under any Act to a resident in the Falekaupule area and payable within that area; and

(xv) notwithstanding section 75 of the Interpretation Act, fines imposed on persons resident in the Falekaupule area by the Island Court for the area.

(2) Any other moneys lawfully derived by a Kaupule from any other source not specifically included in subsection (1) shall form part of the revenue and funds of such Kaupule.

Statutory expenditure

59. Subject to this Act, a Kaupule may incur all expenditures reasonably necessary for and incidental to the carrying out of its statutory functions and those of the Falekaupule.

Method of making budget

60. (1) Every Kaupule shall in each financial year prepare a budget (in this Part referred to as a “Kaupule budget”) for the following financial year, consisting of -

- (a) an estimate of statutory revenue for the year;
- (b) an estimate of statutory expenditure for the year;
- (c) proposals as to how the revenue is to be raised; and
- (d) a detailed explanation of the estimated expenditure.

(2) The estimate of expenditures in a Kaupule budget shall not exceed the estimate of revenues.

(3) A Kaupule budget document shall contain -

- (a) a budget message from the Pule o Kaupule briefly setting out the significance of the budget, particularly in relation to the local development plan;
- (b) a brief summary of the projects and activities to be carried out in pursuit of the statutory goals and objectives of the Falekaupule and of the Kaupule for the ensuing financial year, especially in relation to the delivery of basic services: and
- (c) a budget summary.

Submission of statement of income and expenditure

61. On or before the second week of October of each year, the Ofisa Teu Tupe shall submit to the Failautusi ote Kaupule a statement covering the income and expenditure of the preceding financial year, the actual income and expenditure of the

first half of the current financial year, and the estimated income and expenditure for the remaining half of the current financial year.

Budget preparation

62. (1) Upon receipt of the statements of income and expenditure under section 61, the Failautusi ote Kaupule shall prepare a proposed Kaupule budget for the ensuing financial year, in accordance with this Part.

(2) The Failautusi ote Kaupule shall, in or before the second week of January in each year, submit the proposed Kaupule budget to the Committee on Budget and Appropriations.

Committee on Budget and Appropriations

63. (1) The Committee on Budget and Appropriations shall on receipt of the proposed Kaupule budget under section 62 review and evaluate it and in particular shall -

- (a) determine the feasibility of the income projected for the ensuing financial year;
- (b) recommend to the Kaupule the appropriate tax and other revenue measures which may be adopted to support the budget;
- (c) recommend to the Kaupule the level of annual expenditure for economic, social, and general services based on the approved local development plan;
- (d) recommend to the Kaupule the proper allocation of expenditures for each development activity between current operating expenditures and capital outlay.

(2) The Committee on Budget and Appropriations shall return the proposed budget to the Pule o Kaupule with its recommendations and comments for consideration by the Kaupule on or before the first working day of February.

Authorisation of budget

64. (1) The Pule o Kaupule shall, during the first week of March in each year, after due consideration by the Kaupule of the recommendations and comments of the Committee on Budget and Appropriations made under section 63, submit the proposed Kaupule budget with any appropriate changes to the Falekaupule for approval at the annual Falekaupule Assembly.

(2) At the Falekaupule Assembly the proposed Kaupule budget shall be debated and may be amended, provided such amendments -

- (a) are agreed to by a majority of the members of the Kaupule present at the Assembly; and

(b) do not result in a budget which would not enable the Falekaupule or Kaupule to perform their respective functions in the ensuing year.

(3) When the proposed Kaupule budget has received the approval of the Falekaupule, as indicated by the signature of the Ulu Alik, the Kaupule shall make an appropriations bye-law for the ensuing financial year, in accordance with section 54, without further approval by the Falekaupule.

Supplementary budget

65. (1) Where it appears to a Kaupule in any financial year that expenditure for any specified purpose is desirable and no or insufficient provision for it has been made in the estimates for that year, the Pule o Kaupule may submit an application for supplementary expenditure to the Ulu Alik.

(2) When an application has been received under subsection (1), the Ulu Alik shall as soon as practicable convene a meeting of the Falekaupule to consider it.

(3) The Falekaupule may in respect of an application under subsection (1) either approve or disapprove it as a whole or disapprove, amend or reserve any item or items in it and the Ulu Alik shall notify the Pule o Kaupule accordingly, whereupon the procedure described in section 54 (4) and (5) with respect to proposed bye-laws shall be followed.

(4) When agreement has been reached on an application for supplementary expenditure, the Kaupule shall make a supplementary appropriation bye-law in accordance with section 54 without further approval by the Falekaupule.

Failure to pass budget

66. In the event that a Kaupule fails to pass a bye-law authorising the annual Kaupule budget at the beginning of any financial year, the Kaupule may incur expenditure on recurrent heads of expenditure in accordance with the approved estimates for the previous year for a period of 3 months.

Power to borrow money

67. A Kaupule may from time to time, with the express approval of the Falekaupule, and in accordance with a resolution of the Kaupule in that behalf, raise loans within Tuvalu of such amounts, from such sources, in such manner, and for such purposes as the Kaupule and Falekaupule may think fit for the development of the Falekaupule area.

Overdrafts

68. (1) A Kaupule may from time to time resolve to seek advances from banks by overdraft charged indifferently upon all revenues of the Kaupule for an amount of not more than 10 per cent of its annual estimate of revenue.

(2) An overdraft in excess of 10 per cent of the annual estimate of revenue of a Kaupule shall be treated as a loan and the provisions of section 67 shall apply.

Power to lend money

69. A Kaupule may from time to time, with the express approval of the Falekaupule, and in accordance with a resolution of the Kaupule in that behalf, lend money within Tuvalu, of such amounts, to such persons, in such manner, for such purposes and upon such conditions as the Kaupule and Falekaupule may think fit.

Investment of funds

70. (1) A Kaupule may, with the express approval of the Falekaupule, and in accordance with a resolution of the Kaupule in that behalf, invest all or any portion of Falekaupule moneys held by the Kaupule and all or any portion of Kaupule moneys not needed to meet current expenditure in such investments in Tuvalu as the Falekaupule and the Kaupule may think fit.

(2) With the prior written approval of the Minister, investment of moneys under subsection (1) may be made in investments outside Tuvalu.

Accounts to be kept

71. (1) Every Kaupule shall keep proper accounts and other records in relation to the financial transactions of the Falekaupule under this or any other Act and of the Kaupule.

(2) Immediately after the end of each financial year the Kaupule shall cause its accounts for that year to be brought to a balance and a balance sheet to be prepared with respect to the balance, together with a statement or abstract of the accounts.

(3) As soon as practicable after the accounts under subsection (2) have been prepared, the Pule o Kaupule shall cause a copy of them to be sent to the Ulu Aliko, to the Minister, and to the Auditor-General.

Financial guidelines

72. (1) The Minister, after consultation with each Falekaupule, shall issue in writing in the Tuvalu language financial guidelines not inconsistent with this Act, for:

- (a) regulating and controlling the receipt and payment of moneys by Kaupule;
- (b) regulating and controlling the operation of bank accounts by Kaupule; and

(c) the general control and management of the financial business and affairs of Kaupule, including guidelines on the preparation of budgets.

(2) The Minister may issue guidelines to like effect as those described in subsection (1) in respect of the financial business and affairs of Falekaupule, to the extent that they relate to the performance of the statutory functions of a Kaupule.

(3) Financial guidelines issued under subsection (1) or (2) may be issued either generally or in respect of any particular Falekaupule or Kaupule and shall be followed by all Falekaupule and Kaupule in respect of which they have been issued.

Access to records of Kaupule

73. (1) The Pule o Kaupule may in writing authorise any person to have access to all or to specified books, accounts and records of a Kaupule and any person so authorised shall at all reasonable times have access to and be entitled to inspect such books, accounts and records.

(2) A public officer acting on behalf of the Minister may at all reasonable times and upon production of his authority have access to all the books, accounts and records of a Kaupule as if authorised by the Pule o Kaupule under subsection (1).

(3) Upon payment of a fee, to be specified by the Kaupule by resolution, any person may have access to the books, accounts and records of a Kaupule and upon payment of a further fee may have a certified copy of an entry in any such books, accounts and records.

Audits of accounts

74. Upon receipt of the accounts of a Kaupule under section 71(3) the Auditor-General shall conduct an examination and audit of them in accordance with this Part and with the provisions of the Public Finance Act as if the funds of a Kaupule were public funds.

Transmission of reports, etc.

75. (1) The Auditor General after preparing a report on the examination and audit of the Kaupule accounts shall send to the Pule o Kaupule a copy of the report, together with the annual statement or abstract prepared under section 71.

(2) The Auditor-General shall send a copy of every report prepared by him under subsection (1) to the Speaker of Parliament for tabling in Parliament at the first session following its receipt by the Speaker of Parliament.

Power and duties of the Auditor-General

76. (1) The Auditor-General at every audit of the accounts of a Kaupule held by him may -

- (a) disallow any item of expenditure which is contrary to law;
- (b) surcharge the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure;
- (c) surcharge any sum which has not been duly brought into account upon the person by whom that sum ought to have been brought into account; and
- (d) surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred.

(2) It shall be the duty of the Auditor General -

- (a) to certify the amount due from any person upon whom he has made a surcharge; and
- (b) to certify at the conclusion of the audit his allowance of the accounts, subject to any disallowance or surcharge which he may have made.

Special relief for officers and servants

77. Notwithstanding section 76, no liability to surcharge shall be incurred by an officer or employee of a Kaupule who shows to the satisfaction of the Auditor-General that he acted in pursuance of and in accordance with a resolution of the Falekaupule or Kaupule or of a committee duly appointed by the Kaupule or on the instructions of any officer of the Kaupule to whom he was at the time subordinate.

Auditor-General may take evidence

78. (1) For the purposes of any examination under this Part the Auditor-General or other person duly authorised by him under section 26(1)(b) of the Public Finance Act may -

- (a) take evidence and examine witnesses upon oath or affirmation; and
- (b) by summons under his hand, require all such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers, including the minutes of the proceedings of the Falekaupule or of the Kaupule or of any committee, as he may consider necessary for such examination.

(2) In any proceedings held under subsection (1), no person shall be bound to incriminate himself and every witness shall in respect of any evidence given by him before the Auditor General or other person so authorised be entitled to the same privileges to which he would be entitled if giving evidence before a court.

(3) A person who, without reasonable excuse -

(a) neglects or refuses to comply with the terms of a summons issued under subsection (1)(b);

(b) having appeared in response to a summons under subsection (1)(b), refuses to be examined on oath or affirmation or to take such oath or affirmation ; or

(c) having taken such oath or affirmation, refuses to answer such question as are put to him,

shall be liable for every such neglect or refusal to a fine of \$200, or in default of payment to imprisonment for 6 months.

Payment of sums certified to be due

79. Every sum certified by the Auditor-General to be due from any person shall be paid by that person to the Kaupule concerned within 60 days after it has been so certified or, if an appeal with respect to that sum has been made under section 81, within 30 days after the appeal is finally disposed of or abandoned or fails by reason of non-prosecution.

Recovery of sums certified to be due

80. (1) Any sum which is certified by the Auditor-General to be due to a Kaupule and which has become payable shall be recoverable by the Kaupule as a civil debt.

(2) In any proceedings for the recovery of a sum under subsection (1), a certificate signed by the Auditor-General shall be conclusive evidence of the facts certified and a certificate signed by the Pule o Kaupule or Ofisa Teu Tupe that the sum certified to be due has not been paid shall be conclusive evidence of non-payment, unless it is proved that the sum certified to be due has been paid since the date of the certificate.

(3) Unless the contrary is proved, a certificate purporting to be signed by the Auditor-General or the Pule o Kaupule or Ofisa Teu Tupe shall be deemed to have been so signed.

Appeals against decisions of Auditor-General

81. (1) Subject to subsection (2), a person who is aggrieved by a decision of the Auditor-General on any matter with respect to which he made an objection at the audit and a person aggrieved by a disallowance or surcharge made by the Auditor-General may appeal against the decision to a magistrate's court, unless such decision, disallowance or surcharge relates to an amount exceeding \$1,000, in which case the appeal shall be to the High Court.

(2) No appeal shall be allowed under this section unless, within 60 days of the date of decision or the issue of the certificate, as the case may be, the appellant serves upon the Auditor-General a notice of appeal and files such appeal in the magistrate's court or the High Court, as the case may be, in conformity with any relevant rules of court.

(3) A magistrate's court or the High Court on an appeal under subsection (1) shall have power to confirm, vary or quash the decision of the Auditor-General and to remit the case to the Auditor-General with such directions as it thinks fit for giving effect to the decision on appeal; and, if the decision of the Auditor-General is quashed or is varied so as to reduce the amount of surcharge to \$200 or less, the appellant shall not be subject by reason of the surcharge to the disqualification imposed by section 9 (2) or 11(2).

Publication of report of Auditor-General

82. The Pule o Kaupule shall, within 6 weeks of the receipt of the Auditor General's report under section 75, cause to be published at the Kaupule office -

(a) the annual balance sheet and statement or abstract of accounts prepared under section 71; and

(b) the report on such accounts and statement or abstract received from the Auditor-General under section 75.

PART VIII

COMMUNITY DEVELOPMENT TAX AND OTHER RATES

Rating authority

83. Every Kaupule shall be the rating authority for its Falekaupule area and no authority other than the Kaupule shall have power to make or levy any rate in that Falekaupule area.

Types of rates

84. (1) A Kaupule, with the express approval of the Falekaupule obtained in the Falekaupule Assembly, may by resolution make and levy for each financial year general rates based on one or more of the following systems -

(a) a rate, to be referred to as the community development tax, at a uniform or graduated amount per capita on all residents of the Falekaupule area of or above the age of 18 years;

(b) a rate, to be referred to as the property tax, at a uniform amount per dollar on the assessed value of immovable property situated within the Falekaupule area; and

(c) a rate, to be referred to as the possessions tax, assessed on the assessed value of the possessions or any category of possessions of residents in the Falekaupule area.

(2) In addition to making and levying general rates under subsection (1), a Kaupule may, subject to the approval of the Minister and to any regulations made under section 86, and with the express approval of the Falekaupule, by resolution make and levy a rate, to be referred to as a special rate, at a uniform or graduated amount per capita on any person or class of person resident within the Falekaupule area in order to provide for some specific purpose within that area.

(3) The power to levy a property tax under subsection (1)(b) shall be without prejudice to the provisions of the Landowners Taxation Act, but a person shall not be liable to pay tax on immovable property under both that Act and this Part.

Duty to make rates

85. Unless a formal resolution to refrain from so doing has been passed by the Kaupule and approved by the Falekaupule and by the Minister, every Kaupule shall in every financial year by resolution make and levy one or more of the rates specified in section 84 (1) so as to adequately provide for -

(a) that part of the total estimated expenditure to be incurred by the Kaupule during the financial year which is to be met out of moneys raised by rates; and

(b) any additional amount that is, in the opinion of the Kaupule, needed to cover expenditure previously incurred or to meet contingencies or to cover expenditure which may need to be made before the date on which the money to be received in respect of the next subsequent rate will become available.

Rating regulations

86. (1) The Minister may make regulations providing generally for the making and levying of rates by Kaupule on residents of or persons temporarily resident in their respective Falekaupule areas.

(2) Without affecting the general powers of subsection (1), regulations made under it shall provide in particular for -

(a) the basis and incidence of any rate to be levied under section 84;

(b) the notice to be given by a Kaupule of its intention to make and levy a rate;

- (c) the procedure for the appointment of assessment committees appointed under section 97 and the procedure, powers and duties of such committees;
- (d) the method of assessment of property or possessions for the purpose of any rate to be levied under this Part;
- (e) the hearing of appeals against any such assessment;
- (f) the preparation of rating rolls and the rendering of returns by or the registration of persons liable to pay any rate;
- (g) the dates and places for the payment of any rate;
- (h) the person to whom payment is to be made;
- (i) the exemption of any category of persons from liability to pay the whole or any part of any rate; and
- (j) the imposition of pecuniary penalties for non-payment or late payment of any rate.

Payment of rates

87. (1) Every resident of a Falekaupule area and every person who has stayed in that area for a continuous period of 9 months during the previous financial year shall be liable to pay any rate made and levy under section 85.

(2) Subject to section 88(1) and any regulations made under section 86, it shall be the duty of every person liable to pay any rate to a Kaupule to pay the amount of such rate to a rate collector or other person duly appointed or authorised by the Kaupule to collect and receive the rate at such time and at such place as may from time to time be specified by the Kaupule by resolution.

(3) If no person has been appointed or authorised to collect and receive rates, the payment of rates shall be made to the Ofisa Teu Tupe.

(4) If no time or place for payment of rates has been specified by the Kaupule, the time shall be deemed to be on or before 30th April in every year and the place shall be deemed to be the office of the Ofisa Teu Tupe.

(5) For the purposes of any proceedings for the recovery of any rate imposed under this Part, if a question arises as to whether or not a person is under a specified age, or resides in any particular Falekaupule area, or has or does not have income of a particular amount, the burden of proving that he is under such age, or does not so reside, or does not have such income shall be upon the person alleging the fact.

Exemption from and remissions of rates

88. (1) If a person who would otherwise be liable under this Part for payment of a rate in any Falekaupule area produces to the Ofisa Teu Tupe for that area a valid receipt issued in respect of another Falekaupule area showing that he has paid a similar rate which was levied in that other area for the current financial year, he shall not be liable for payment of the rate for such year levied in the first mentioned Falekaupule area.

(2) The following shall be exempt from assessment and rates under this Part -

- (a)** lands and buildings used exclusively for the purpose of public worship;
- (b)** cemeteries and burial grounds;
- (c)** the Falekaupule building and charitable and educational institutions; and
- (d)** any other immovable property specifically or generally exempted by the Minister by order.

(3) A Kaupule may by resolution reduce or remit payment of any rate on account of the inability of any person liable to pay the rate or for any other good reason.

(4) Subject to any regulations made under section 87 a Kaupule may by resolution exempt any person from liability to pay any rate.

Claim for amount of rate

89. (1) Subject to subsection (2), if any person fails to pay any rate for which he is liable on or before the date on which it is payable, the Kaupule which levied the rate may recover the same as a civil debt together with such costs and such penalty as may be prescribed by or under this Act or any regulations made under it.

(2) No demand shall be made for any rate or penalty nor shall any proceedings for the recovery thereof be commenced more than 3 years after the date on which such rate became due and payable.

Evidence of rate

90. In any proceedings to recover a rate levied under this Part the rate books and other records of the Kaupule concerned and all certified copies of entries made in them purporting to be signed by the Pule o Kaupule shall, upon their production, be *prima facie* evidence of such rate and of the matters so stated, but any person so proceeded against may adduce evidence to show that the requirements of this Act have not been complied with.

Penalty for refusal to pay rates and willful misrepresentation

91. (1) A person who, without lawful justification or excuse, the proof of which shall lie on him, refuses or willfully neglects to pay any rate payable by him under this Part shall be liable to a fine of \$200 and to imprisonment for 6 months.

(2) A person who, in connection with an assessment for rates under this Part, willfully misrepresents his rateable capacity shall be liable to a fine of \$200 and to imprisonment for 6 months.

(3) The conviction of a person under subsection (1) shall not prejudice -

(a) the right of a Kaupule under section 89 to bring civil proceedings for the recovery of any rate; and

(b) the power to lay a further charge under subsection (1) for a separate offence of refusal or willful neglect to pay the rate after the date of the conviction.

Penalty for inciting a person to refuse to pay rates

92. A person who, without lawful justification or excuse, the proof of which shall lie on him, incites another person to refuse to pay a rate payable under this Part or who incites or assists any person to misrepresent in any way his or any other person's rateable capacity, shall be liable to a fine of \$400 and to imprisonment for 12 months.

Penalty for unauthorised collection of rates

93. A person who -

(a) not being authorised under this Part or by the Kaupule concerned to do so, collects or attempts to collect any rate imposed under this Part; or

(b) collects or attempts to collect any rate other than a rate prescribed in this Part or authorised by any other Act,

shall be liable to a fine of \$400 and to imprisonment for 12 months.

Duty to give information

94. (1) A person who is required to do so by or under this Act shall give all such information as may reasonably be required of him by any Kaupule, rate collector or assessment committee for the purpose of obtaining information for the assessment or collection of a rate.

(2) A person who, having been required to give information under subsection (1), willfully misleads or attempts to mislead any Kaupule, rate collector or assessment committee or any of their agents on any matter connected with the

assessment and collection of a rate shall be liable to a fine of \$200 and to imprisonment for 6 months.

(3) A person who, having been required to give information under subsection (1), refuses or willfully neglects to give such information shall be liable to a fine of \$200 or, in default of payment, to imprisonment for 6 months.

Rate collectors

95. (1) A Pule o Kaupule, upon a resolution of the Kaupule, may in writing appoint any suitable person to be a rate collector in respect of the whole or any part of the Falekaupule area.

(2) It shall be the duty of every rate collector -

(a) to furnish in writing to the Kaupule a nominal roll of all rateable persons or immovable property, as the case may be, in the Falekaupule area;

(b) to collect and receive from each person liable for the payment of rates in the Falekaupule area the rates payable by each person;

(c) to pay to the Ofisa Teu Tupe all amounts collected by him; and

(d) to report to the Pule o Kaupule the name of any person who has failed to pay the amount due from him for rates.

Offences by rate collectors

96. A rate collector who -

(a) fails to pay to the Ofisa Teu Tupe any money collected by him as rates ;

(b) knowingly demands from any person an amount in excess of the duly assessed rates ;

(c) knowingly or recklessly renders false returns, whether orally or in writing, of the number of rate payers or of the amount of rates collected or received by him; or

(d) willfully fails to carry out any duty imposed upon him as a rate collector by section 95(2)

shall be liable to a fine of \$400 and to imprisonment for 12 months.

Assessment committees

97. (1) A Kaupule may, in accordance with regulations made under section 86, appoint one or more assessment committees for the purpose of assessing the

liability of any person or persons for payment of any rate levied or to be levied under this Part.

(2) The procedure, powers and duties of an assessment committee appointed under subsection (1) shall be governed by regulations made under section 86.

Legal proceedings

98. Proceedings for the recovery of any rate or penalty under this Part may, without prejudice to the right of any other person or authority to institute criminal proceedings, be taken by the Pule o Kaupule of the Kaupule responsible for the collection of the rate or by any other person duly appointed by him in that behalf.

PART IX

OFFICERS AND STAFF OF KAUPULE

Appointed officers

99. (1) Every Kaupule shall have, and shall in accordance with this Part appoint persons to, the following permanent offices -

- (a) Kaupule Secretary (Failautusi ote Kaupule);
- (c) Kaupule Treasurer (Ofisa Teu Tupe);
- (d) Community Planning and Development Officer (Ofisa o Aofaga);
- (e) Kaupule Clerk (Kilaaki);
- (f) Women's Community Worker (Ofisa o Fafine).

(2) If the circumstances in a particular Falekaupule area so justify, one or more of the offices listed in subsection (1) may be combined.

(3) The functions of each of the offices listed in subsection (1) shall be as specified by the Minister by notice after consultation with each Falekaupule.

(4) The qualifications required by holders of each of the offices listed in subsection (1) shall be as determined by the Minister, in consultation with each Falekaupule.

Other staff

100. (1) Subject to subsection (2), a Kaupule may, in addition to appointing officers under section 99, appoint such other officers and employ such other persons, either on a temporary or a permanent basis, as it thinks necessary for the performance of its functions and those of the Falekaupule under this Act.

(2) Before creating any new permanent post, the Kaupule shall obtain the express approval of the Falekaupule for the creation of the post.

Procedure for appointments

101. (1) The approval of the Falekaupule shall be obtained in the manner prescribed in this section before any person is appointed as a permanent officer of a Kaupule or employed by a Kaupule on a permanent basis.

(2) A vacancy for a post as a permanent officer or for other permanent employment with a Kaupule shall be filled as follows -

(a) the Failautusi ote Kaupule shall advertise the post as widely as possible in the Falekaupule area and invite applications from suitably qualified persons;

(b) the Pule o Kaupule shall send a list of all qualified applicants for the post to the Ulu Aliko who shall arrange for the Falekaupule to consider the applications within 30 days and list them in order of preference;

(c) subject to paragraph (d), the Pule o Kaupule shall, upon a resolution of the Kaupule, appoint a person to fill the post from among the persons listed under paragraph (b); and

(d) if the Kaupule does not consider any of the applicants listed under paragraph (b) to be suitable, the Failautusi ote Kaupule shall advertise the vacancy throughout Tuvalu and the procedure prescribed in paragraphs (b) and (c) shall be repeated.

(3) The procedure for filling a vacancy other than one to which subsection (2) applies shall be governed by the relevant Staff Guidelines or, if no relevant guidelines have been issued, as determined by the Kaupule, provided that all persons who might be qualified for the post have an opportunity to apply.

Appointment of seconded public officers

102. (1) Notwithstanding the other provisions of this Part, a Pule o Kaupule may, with the approval of the Minister and upon a resolution of the Kaupule, appoint to any permanent office or employ on a permanent or temporary basis a public officer seconded to the service of the Kaupule for that purpose, for such period and on such terms and conditions as the Minister may approve.

(2) A public officer seconded to the service of a Kaupule under subsection (1) remains a public servant for purposes of salary, seniority, pension and civil service discipline, but is answerable to the Kaupule for the performance of his functions and has a duty of confidentiality towards the Kaupule.

Joint appointments and employment

103. Subject to section 101 (as to the role of the Falekaupule) a Kaupule may enter into an agreement with one or more other Kaupule for the joint appointment of any officer or the joint employment of any staff, including the joint appointment or employment of a seconded public officer.

Status of Kaupule officers and employees

104. (1) Except for seconded public officers, persons appointed or employed by a Kaupule shall not have the status of public officers for purposes of the Public Service Act and, subject to subsection (2), Government Administrative Orders shall not apply to them.

(2) The terms and conditions of service of Kaupule officers and employees and matters of discipline with regard to them shall be governed by Staff Guidelines, or, if no relevant guidelines have been issued, by Government Administrative Orders to the extent that those orders can conveniently apply.

Interest of officer in contract

105. (1) Subject to subsection (2), no officer or employee of a Kaupule may be in any way concerned or interested directly or indirectly, by himself or by a partner (otherwise than as a minority shareholder in a company), in any contract made with or work executed for the Kaupule.

(2) This section shall not apply to an interest in a contract or other work which an officer or employee of a Kaupule may have as a ratepayer or inhabitant of the area.

(3) A breach of subsection (1) shall amount to a disciplinary offence, but shall not attract a criminal penalty or any civil liability.

Accountability of officers

106. (1) Every officer appointed or other person employed by a Kaupule, whether under this or any other Act, shall at such times and in such manner as the Kaupule directs, during the continuance of his office or employment or within 3 months after his ceasing to hold it, provide to the Kaupule -

(a) a written account of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and records supporting the entries in it; and

(b) a list of persons from whom or to whom money is due in connection with his office, showing the amount due from or to each person.

(2) Every officer appointed or other person employed by a Kaupule shall pay all money due from him to the Kaupule to the Ofisa Teu Tupe.

(3) If an officer to whom this section applies -

(a) refuses or willfully neglects to make any payment which he is required by this section to make; or

(b) after 3 days notice in writing signed by the Pule o Kaupule or by 3 members of the Kaupule and given to him or left at his usual or last known place of residence, refuses or willfully neglects to provide to the Pule o Kaupule any account or list which he is required by this section to provide, or to produce any relevant voucher or other document or record,

a magistrate's court shall, on complaint by the Pule o Kaupule, make such order for payment or production and such other and ancillary orders within the civil jurisdiction of the court as will do justice in the case.

(4) A person who fails to comply with an order of a magistrate under subsection (3) shall be liable to a fine of \$200 and to imprisonment for 6 months.

(5) Nothing in this section shall affect the right of any person or body to seek any remedy by action against any officer or employee of a Kaupule, except that the officer or employee shall not be both sued by action and proceeded against under this section for the same cause.

Powers of interdiction and dismissal

107. (1) In accordance with any relevant Staff Guidelines, the Pule o Kaupule may interdict any officer or employee of the Kaupule from the duties and emoluments of his office or employment on the grounds of incapacity, neglect of duty or misconduct, pending a decision of the Kaupule as to the removal of the officer or employee.

(2) Where an officer or employee of a Kaupule who has been interdicted under subsection (1) is removed from office under subsection (3), such officer or employee shall be deemed to have been removed from office or employment as from the date of the interdiction.

(3) In accordance with any relevant Staff Guidelines, a Kaupule may by resolution, for sufficient cause, and after giving the officer or employee an opportunity to be heard, dismiss any officer or employee from its service or impose such other penalty as may be specified in the guidelines.

(4) A person dismissed or otherwise disciplined under subsection (3) may appeal to the Falekaupule against the decision of the Kaupule and the Falekaupule

shall hear the appeal within 30 days and may confirm, reverse or vary the decision, but not so as to impose a greater penalty.

Salaries

108. (1) The salaries, allowances and other emoluments payable to permanent officers and other permanent employees of a Kaupule shall be in line with those specified in the relevant Staff Guidelines.

(2) Where no relevant Staff Guidelines have been issued in respect of any office or employment of a Kaupule, the salary, allowances and other emoluments of the post shall be as determined by the Kaupule, but subject to the express approval of the Falekaupule.

Staff Guidelines

109. (1) The Minister may, after consultation with each Falekaupule, issue written Staff Guidelines in the Tuvalu language relating to the discipline and conditions of service of officers and employees of Kaupule.

(2) Staff Guidelines issued under subsection (1) may apply either generally or to any particular Kaupule, and either to all or to particular offices or employment.

(3) Guidelines issued under subsection (1) shall be observed by all Kaupule to whom they apply and where terms and conditions of service are specified in such instructions in respect of any office or employment, a Kaupule may only appoint or employ a person on those terms and conditions unless for sufficient cause it otherwise resolves.

(4) Without affecting the general powers of subsection (1), guidelines issued under it may-

(a) set guidelines for maintaining discipline, including withholding or deferring of increments, or reduction in rank or salary, or deductions from salary in respect of damage to or loss of property of the Falekaupule or Kaupule by misconduct or breach of duty;

(b) provide for interdiction, suspension from duty, dismissal and other disciplinary measures;

(c) specify the method of appointments not covered by section 102, the duration of appointments, and the principles for promotion, for acting appointments, and for termination of appointments;

(d) specify the remuneration payable and the rates of any allowances and gratuities which may be granted to officers and employees of Kaupule, the

conditions to be attached to such allowances and gratuities, and the method of their payment;

(e) specify other benefits, including leave, housing, and medical and educational allowances which may be granted;

(f) provide for and set guidelines on such other matters relating to the duties and responsibilities of officers and employees of Kaupule, including public officers seconded to the service of Kaupule, as the Minister considers can best be provided for and governed by such guidelines.

Protection of Kaupule members, officers and employees

110. No Ulu Alikī and no member, officer or employee of a Kaupule shall be personally liable for any act done or omitted by the Falekaupule or Kaupule or any member, officer or employee of the Kaupule in good faith in pursuance or intended performance of the statutory functions of the Falekaupule or of the Kaupule.

PART X

LEGAL PROVISIONS

Notice of action to be given by plaintiff

111. (1) Any person intending to bring an action against a Kaupule shall, at least one month before commencing such an action, give notice to the Pule o Kaupule, either by himself or his agent, of his intention to do so.

(2) A notice under subsection (1) shall state the cause of action, the name and address of the intending plaintiff and the relief which he claims.

(3) Any person seeking legal redress for any act or omission of a Falekaupule in respect of its statutory functions shall bring proceedings against the Kaupule as agent for the Falekaupule.

Limitation of action against Kaupule

112. If an action is commenced against a Kaupule -

(a) for anything done in performance or intended performance of its statutory functions or those of the Falekaupule or in exercise or intended exercise of any lawful power; or

(b) in respect of any alleged neglect or default in the performance of such functions or exercise of such power,

the action must be commenced within 12 months of the act, neglect or default complained of or, if the damage or injury is continuing, within 12 months after it ceases.

Appearance of Kaupule in legal proceedings

113. In any prosecution by or on behalf of a Kaupule and in any civil cause or matter in which a Kaupule is a party the Kaupule may be represented by any member, officer or employee duly authorised in that behalf by the Kaupule.

Mode of service on Kaupule

114. (1) Subject to subsection (2), the notice referred to in section 111 and any summons, notice or other document authorised to be served on a Kaupule in connection with any suit by or against a Kaupule shall be served by delivering it to or sending it by registered post addressed to the Pule o Kaupule at the Kaupule office.

(2) The court may with regard to any particular suit or document order service on a Kaupule to be effected otherwise than as specified in subsection (1) in which case service shall be effected in accordance with such order.

Description of property

115. Wherever in any legal process or proceeding it is necessary to refer to the ownership or description of property belonging to or under the management of a Falekaupule or a Kaupule, such property may be described as the property of the Falekaupule or of the Kaupule as the case may be.

Name of Kaupule need not be proved

116. In any proceedings instituted by or against a Kaupule it shall not be necessary to prove the corporate name of the Kaupule or its constitution or area of authority.

Onus of proof in certain cases

117. Where in any proceedings under this Act a person who is summoned or otherwise dealt with as the occupier of any premises alleges that he is not the occupier, the burden of proving such allegation shall lie upon that person.

Powers of entry

118. Subject to this or any other Act, a member, officer or servant of a Kaupule duly authorised in writing for the purpose by the Pule o Kaupule may, at all reasonable times and, if required, upon production of his authority, enter into or upon

any land, buildings or premises within the Falekaupule area for the purpose of making any inspection or inquiry or executing any works authorised under this Act or under a regulation, bye-law or order made under it.

Publication of notices

119. Unless expressly provided otherwise, any notice or other document required by this Act to be published shall be deemed to be duly published if it is exhibited on the notice board or in some conspicuous place at the Kaupule office.

Authentication and execution of documents

120. (1) Every notice, order or other document requiring authentication by a Kaupule shall be sufficiently authenticated if signed by the Failautusi ote Kaupule, by the Pule o Kaupule or by any other officer or member of the Kaupule duly authorised by the Kaupule by resolution.

(2) Any contract or instrument which, if entered into or executed by an individual would not need to be under seal, may be entered into or executed on behalf of a Kaupule by any person generally or specifically authorised by the Kaupule for that purpose.

(3) Any document purporting to be a document duly executed or issued under the seal of a Kaupule or on behalf of a Kaupule shall, unless the contrary is proved, be deemed to be a document so executed or issued, as the case may be.

PART XI

MISCELLANEOUS

Falekaupule Assembly

121. (1) There shall in March each year and at 3-monthly intervals throughout the year be held in the Falekaupule on each island in Tuvalu an assembly of all residents of the Falekaupule area aged 18 years and over, at which the following shall be discussed -

- (a) at every assembly, a report from the Pule o Kaupule on the activities and finances of the Kaupule for the preceding 3 months;
- (b) at the March assembly, the Kaupule budget for the following year, as submitted by the Pule o Kaupule under section 64, including any proposal with regard to rates;
- (c) progress on implementation of the local development plan for the island;

(d) such other matters as the Ulu Aliko and the Pule o Kaupule agree can conveniently be discussed in the assembly;

(e) any matter which the Minister requests should be discussed in the assembly; and

(f) any matter which a majority of the persons entitled to vote in the Falekaupule resolves should be discussed in the assembly.

(2) If a two-thirds majority of the persons entitled to vote in the Falekaupule so requests, the Ulu Aliko shall convene an additional assembly as described in subsection (1) to discuss such matters as may be specified in the request.

Local Development Plan

122. (1) There shall be for each Falekaupule area a local development plan which will set out programmes and priorities for social and economic developments for that area.

(2) A draft local development plan shall be submitted by the Pule o Kaupule to the Ulu Aliko for discussion at the first Falekaupule Assembly after this Act comes into force and shall, subject to any amendments by the Falekaupule, be adopted as the local development plan for that Falekaupule area.

(3) The local development plan shall be reviewed by the Falekaupule Assembly each year in accordance with section 121.

(4) The Minister may, after consultation with each Falekaupule, issue guidelines for the formulation of local development plans.

Determination of domicile and age

123. (1) Where for the purposes of registration of voters under Part III or the imposition or collection of rates under Part VIII any question arises as to the place of domicile or age of any person, the place of domicile or age shall be determined, as regards the registration of voters, by the officer appointed to compile or revise the register of voters concerned and, as regards the imposition or collection of rates, by the rate collector concerned.

(2) In determining the age or place of domicile of a person under subsection (1), the officer or rate collector concerned shall determine the age to be the person's apparent age and the place of domicile to be the person's place of birth, unless the person shows to the satisfaction of the officer or rate collector that his age is other than his apparent age or that his place of domicile is not the place where he was born, as the case may be.

(3) Any question as to the age of any person arising out of the application of any provision of this Act or of any regulation or bye-law made under it shall be

determined, in the manner specified in this section, by the person authorised to do so in the provision.

(4) A person who is aggrieved by a determination made under this section may appeal to the Minister, whose decision shall be final.

Transfer of powers of public officers to Kaupule

124. (1) Where the Minister considers that the powers and duties of any public officer can appropriately be exercised or performed by a Kaupule, he may, after consultation with the Pule o Kaupule, by order confer those powers and impose those duties on the Kaupule, which may in turn authorise or require any officer or employee of the Kaupule to exercise or perform them.

(2) Powers and duties transferred to a Kaupule under subsection (1) are declared to be additional statutory functions of that Kaupule.

Procedure for consultation

125. (1) Any consultation between the Minister and a Falekaupule under this Act shall be conducted in the first instance through the Pule o Kaupule of each island, who shall in turn liaise with the Ulu Aliko as regards the convening of a meeting of the Falekaupule if appropriate.

(2) Where this Act requires the approval of the Falekaupule to be obtained before action is taken by the Kaupule, it shall be the responsibility of the Pule o Kaupule to liaise with the Ulu Aliko to ensure that the matter is discussed in the Falekaupule.

(3) It shall be the duty of the Pule o Kaupule on each island to supply the Minister with any information he may reasonably require in relation to the provisions of this Act.

Obstruction of officers, etc.

126. A person who -

(a) willfully obstructs any Ulu Aliko or Pule o Kaupule or any member, officer or servant of a Kaupule in the performance of the statutory functions of the Falekaupule or of the Kaupule; or

(b) being the occupier of any premises, prevents the owner of them from complying with any requirements of a Kaupule or of any officer or employee of a Kaupule in performance of the statutory functions of the Kaupule,

shall be liable to a fine of \$100 and to imprisonment for 3 months.

Penalty for unqualified person sitting or voting

127. (1) A person who -

(a) sits or votes in the Kaupule, having been appointed or elected when not qualified to be so; or

(b) sits or votes in a Kaupule after his seat has become vacant or he has become disqualified from sitting or voting in the Kaupule,

knowing, or having reasonable grounds for knowing, that he was not qualified or that his seat has become vacant, or that he is disqualified, as the case may be, shall be liable to a penalty of \$20 for every day upon which he so sits or votes.

(2) A penalty imposed under subsection (1) shall be recoverable as a civil debt by the Kaupule concerned.

General penalty

128. (1) A person who is convicted of an offence under this Act for which no other penalty is expressly provided shall be liable to a fine of \$100 or, in default of payment, to imprisonment for 3 months, and, in the case of a continuing offence, a further penalty of \$10 for each day on which the offence is continued after written notice of the offence has been served on the offender.

(2) In addition to any penalty imposed under subsection (1), any expense incurred by a Falekaupule or Kaupule in consequence of the commission of an offence under this Act shall be paid by the person committing the offence and shall be recoverable as a civil debt by the Kaupule on its own behalf, or on behalf of the Falekaupule, as the case may be.

Regulations applying within Falekaupule area

129. The Minister may, after consultation with each Falekaupule, make regulations applying to all Falekaupule areas or to a particular Falekaupule area for the better carrying into effect of the provisions of this Act and may in such regulations prescribe a penalty not exceeding a fine of \$500 or 6 months imprisonment for a breach of the regulations.

Crown rights

130. Unless expressly provided otherwise, nothing in this Act shall affect prejudicially any estate, right, privilege or exemption of the Crown.

Repeal and saving

131. (1) Subject to subsection (2), the Local Government Act shall be repealed on the date the whole of this Act comes into force.

(2) If the Minister appoints different dates for the coming into force of different provisions of this Act, the provisions of the Local Government Act shall be progressively repealed corresponding to the provisions brought into force by the Minister.

(3) All bye-laws, regulations, orders, instructions, notices and appointments made or issued under provisions of the Local Government Act shall be deemed to have been made under the corresponding provisions of this Act and shall, with necessary modifications, remain in effect until revoked or amended under this Act.

(4) Any regulations or bye-laws made under provisions of the Local Government Act in respect of which there are no corresponding provisions in this Act shall, with necessary modifications, remain in effect as though they had been made under this section and may be amended or revoked under this subsection.

(5) Any reference in any written law in force immediately before the commencement of this Act to a local government council or to a president, executive officer or other officer of such a council shall be read and construed as if it were a reference to a Kaupule, a Pule o Kaupule, a Failautusi ote Kaupule or other officer of a Kaupule respectively, and every reference to a council fund shall be read and construed as a reference to a Kaupule fund.

SCHEDULE 1

(Section 4 (1))

FALEKAUPULE

(in alphabetical order)

<u>Name</u>	<u>Area of Authority</u>	<u>Number of Elected Members of Kaupule</u>
Falekaupule o Funafuti	Funafuti atoll	6
Falekaupule o Nanumaga	Nanumaga atoll	6
Falekaupule o Nanumea	Nanumea atoll	6
Falekaupule o Niutao	Niutao and Niulakita atolls	6
Falekaupule o Nui	Nui atoll	6
Falekaupule o Nukufetau	Nukufetau atoll	6
Falekaupule o Nukulaelae	Nukulaelae atoll	6
Falekaupule o Vaitupu	Vaitupu atoll	6

SCHEDULE 2

(Section 7 (1))

COMMON SEALS OF KAUPULE

Name	Description
Kaupule o Funafuti	A Falekaupule building on a line representing land, with wavy lines underneath representing the sea, surrounded by 8 pairs of banana leaves and mitre shells in the shape of a shield, the whole surrounded or accompanied by the words “Kaupule o Funafuti” .
Kaupule o Nanumaga	The like emblem, surrounded or accompanied by the words “Kaupule o Nanumaga” .
Kaupule o Nanumea	The like emblem, surrounded or accompanied by the words “Kaupule o Nanumea” .
Kaupule o Niutao	The like emblem, surrounded or accompanied by the words “Kaupule o Niutao” .
Kaupule o Nui	The like emblem, surrounded or accompanied by the words “Kaupule o Nui” .
Kaupule o Nukufetau	The like emblem, surrounded or accompanied by the words “Kaupule o Nukufetau” .
Kaupule o Nukulaelae	The like emblem, surrounded or accompanied by the words “Kaupule o Nukulaelae” .
Kaupule o Vaitupu	The like emblem, surrounded or accompanied by the words “Kaupule o Vaitupu” .

SCHEDULE 3

(Section 40)

FUNCTIONS OF FALEKAUPULE

(Note: Where an Act is mentioned in the Schedule, the function of the Falekaupule is to be performed in conjunction with any other authority empowered to implement the Act.)

1. Agriculture, Livestock and Fisheries

- (a) to provide services for the improvement of agriculture;
- (b) to control plant diseases, weeds and pests in accordance with the Plants Act;
- (c) to control or exterminate insect, animal or other pests detrimental to crops;
- (d) to control by bye-laws methods of husbandry;
- (e) to regulate by bye-laws areas and methods of planting and types of crops and trees;
- (f) to provide services for the improvement of livestock;
- (g) to prohibit, restrict or regulate by bye-laws the movement of livestock in or through the Falekaupule area;
- (h) to prohibit, restrict and regulate by bye-laws the keeping of livestock of any description;
- (i) to establish, maintain and control pounds, seize and impound any stray animal and provide by bye-laws for the payment of compensation for damage done by any such animal;
- (j) to prohibit cruelty to animals and any specified acts of cruelty to animals in accordance with the Animals (Control of Experiments) Act;
- (k) to establish, erect, maintain and control slaughter houses;
- (l) to provide for the control, destruction and licensing of dogs in accordance with the Dogs Act;
- (m) to prevent and control the outbreak or the prevalence of any disease among animals in accordance with the Quarantine Act;
- (n) to provide for the improvement and control of fishing and related industries in accordance with the Fisheries Act;
- (o) to prohibit, restrict or regulate the hunting, capture, killing or sale of animals, reptiles, birds or fish in accordance with the Wildlife Conservation Act.

2. Building and Town or Village Planning

- (a) to regulate and control by bye-laws the erection and construction, demolition, re-erection and reconstruction, conversion and re-conversion, alteration, repair, sanitation and ventilation of public and private buildings and structures;
- (b) to provide by bye-laws for building lines and the layout of buildings;

- (c) to make advances, upon such conditions as may be approved by the Minister, for the purpose of enabling persons to build or buy dwelling-houses;
- (d) to prepare and undertake by means of bye-laws control schemes for improved housing layouts and settlements;
- (e) to prescribe the conditions to be satisfied by a site for any building or for any class of building;
- (f) to prohibit by bye-laws the construction of any new building unless and until the approval of the Kaupule has been obtained;
- (g) to provide for the demolition of dangerous buildings and for the recovery of any expenses incurred in connection with such demolition;
- (h) to prohibit or regulate by bye-laws the use in any defined area of any inflammable material in the construction or repair of any building;
- (i) to build, equip and maintain social or sporting centres, public libraries and museums, communal feeding centres, restaurants, rest houses, or buildings designed and used for public or educational purposes;
- (j) to build, equip, maintain and let shops;
- (k) to prohibit or regulate by bye-laws the making of pulaka pits or other excavations;
- (l) to control and regulate by bye-laws the siting of advertisements and hoardings or other structures designed for the display of advertisements;
- (m) to regulate by bye-laws the use of natural building and construction materials;
- (n) to establish, erect and maintain public monuments and to make collections of money towards the establishment or maintenance of them;
- (o) to restrict by bye-laws the use of barbed wire and the use of broken glass or the like on fences and walls;
- (p) to name streets and public places;
- (q) to lay out and adorn any public place by any architectural scheme or ornamentation, including the erection of statues, fountains or other structures.

3. Education

- (a) to build, equip, maintain or manage any kindergarten primary school or any other class of school approved by the Minister;
- (b) to grant sums of money towards the establishment, equipment or maintenance of any primary school or any other class of school approved by the Minister;
- (c) to grant and maintain scholarships or bursaries to persons resident in the Falekaupule area to attend any school or other educational institution in Tuvalu or elsewhere;
- (d) to supervise the compulsory education of children or specified categories of children between the ages of 5 and 15 years in accordance with the Education Act;
- (e) to grant sums of moneys towards the establishment or maintenance of any public library or museum or to any association existing for the promotion of arts and crafts, or recreation and sport, or educational purposes generally.

4. Forestry and Trees

- (a) to establish, preserve, maintain, improve and control tree nurseries, forests and woodlands and to sell the produce from them;
- (b) to plant and tend trees in, and remove trees from any public place.

5. Land

- (a) to prevent and control erosion of land by the sea or other cause;
- (b) to provide for the fencing of land and for the maintenance and repair of such fencing;
- (c) to engage in and promote the reclamation of land from the sea on behalf of the Crown, in accordance with the Foreshore and Land Reclamation Act.

6. Relief of Famine and Drought

- (a) to regulate by bye-laws the areas and methods of planting and types of crops in areas which are liable to drought or famine;
- (b) in time of famine or drought to provide or arrange for the provision of appropriate relief.

7. Markets

- (a) to build, equip, open, close and maintain markets;
- (b) to prohibit by bye-laws the erection of stalls in places other than markets, and to prevent by bye-laws the sale and purchase of goods or stock near established markets;
- (c) to regulate and control markets by bye-laws, including the fixing of and collection of stallage, rents and tolls;
- (d) to fix by bye-laws the days and hours during which a market may be held and to prevent the sale and purchase of goods in markets at any other time.

8. Public Health

- (a) to safeguard and promote public health, including preventing and dealing with any outbreak or the prevalence of any disease, in accordance with the Public Health Act;
- (b) to regulate by bye-laws the number of persons permitted to reside in a building or room of any particular size, construction or design;
- (c) to build, equip, and maintain, or grant sums of money towards the building, equipment or maintenance of any health centre or clinic or other medical institution approved by the Minister;
- (d) to build, equip and maintain, or grant sums of money towards the building, equipment or maintenance of any institution or settlement approved by the Minister for the aged, destitute or infirm or for orphans or lepers;
- (e) to exterminate and prevent the spread of mosquitoes, rats, bugs and other vermin;

- (f) to establish and operate ambulance services or to make grants towards such services approved by the Minister;
- (g) to establish, maintain and carry out services for the removal and destruction of, or otherwise dealing with, all kinds of rubbish, refuse or excreta and by bye-laws to require householders to contribute to such services;
- (h) to prohibit by bye-laws activities detrimental to the sanitary condition of the Falekaupule area or any part of it;
- (i) to provide, erect and maintain a public water supply, and impose water rates in accordance with the Water Supply Act;
- (j) to establish, maintain and control public wells, springs, bathing places, wash houses and swimming pools;
- (k) by bye-laws to regulate or prohibit the sinking of wells and provide for the closing of wells;
- (l) to prevent the pollution of any water, and by bye-laws to prevent access to any polluted source of water;
- (m) by bye-laws to regulate the production or preparation for sale and sale of foodstuffs, and to provide for the inspection of such foodstuffs and the places or premises used for their production, preparation or sale;
- (n) to establish, maintain and by bye-laws control cemeteries or burial grounds;
- (o) to provide for the cleaning and clearing of any public place.

9. Public Order, Peace and Safety

- (a) to assist the police in controlling any act or conduct likely to cause a riot or disturbance and in suppressing any breach of the peace;
- (b) to prohibit, regulate or restrict the carrying or possession of weapons in accordance with the Arms and Ammunition Act;
- (c) to prevent, abate and control fires;
- (d) by bye-laws to prohibit, control and restrict the storage of inflammable or offensive materials in specified areas;
- (e) to regulate by bye-laws the services of guides, porters and carriers;
- (f) to prevent and remove public nuisances;
- (g) to control by bye-laws the movement of beggars and vagrants in public places;
- (h) to regulate and control by bye-laws public collections in public places;
- (i) by bye-laws to prohibit or restrict hawking, and to license hawking in accordance with the Licences Act;
- (j) to control by bye-laws the movement of children and young persons in public places during the hours of darkness;
- (k) to prohibit or restrict by bye-laws the drinking of alcohol in public places other than licensed premises.

10. Communications and Public Utilities

- (a) to make, alter, divert and maintain roads, streets, parking areas, paths, culverts, causeways, bridges, drains and water-courses;
- (b) to provide or arrange for lighting in public places and to provide, construct and maintain an electricity supply in conjunction with the Tuvalu Electricity Corporation;

- (c) to make, alter and maintain wharves and jetties;
- (d) to make, alter and maintain aerodromes on behalf of the Government, in accordance with the Aerodromes and Air Navigation Aids Act;
- (e) to provide postal and wireless telegraphic services in conjunction with the Government and the Tuvalu Telecommunications Corporation and in accordance with the Post Office Act and the Telecommunications Act respectively;
- (f) to erect and maintain navigational aids in conjunction with the Government and in accordance with the Harbours Act;
- (g) to establish, acquire and maintain transport services by land or water, including ferries;
- (h) by bye-laws to prohibit, restrict or control the access of motor traffic to any road or parking area maintained by the Falekaupule and to impose speed limits in respect of any road maintained by the Falekaupule in accordance with the Traffic Act;
- (i) to administer the licensing of bicycles in accordance with the Traffic Act;
- (j) to regulate or prohibit by bye-laws the planting, cutting or destruction of any trees or vegetation growing along any street, road, path or in any public place;
- (k) to provide by bye-laws that the owners or occupiers of any land or premises maintain, clear and keep free from vegetation and rubbish such land or premises and the roads, streets, paths or public places adjoining them;
- (l) to prevent damage or obstruction to any roads, streets, paths, or open spaces maintained by the Falekaupule.

11. Trade and Industry

- (a) to establish, maintain and control collection centres, storage depots and processing services for agricultural produce;
- (b) to provide by bye-laws for the control, regulation, inspection, supervision and licensing of places of entertainment and recreation, lodging and eating-houses, and premises in which any profession, trade or business is carried on;
- (c) to prescribe by bye-laws the conditions under which any offensive trade or industry may be carried on.

12. Miscellaneous

- (a) to establish, maintain and provide information and publicity services;
- (b) to require the marriage, birth or death of any person within the Falekaupule area to be reported to or registered with the Kaupule and to appoint registration officers for such purposes in accordance with the Marriage Act and the Death and Fire Inquiries Act;
- (c) to promote and regulate the development of an arts and crafts industry;
- (d) to protect and preserve the traditional culture of the Falekaupule area, and by bye-laws to prohibit or control the removal from it of any antique artefact;
- (e) to establish and manage, and by bye-laws to regulate, recreation grounds, open spaces and parks;

- (f) in conjunction with the Government to provide for and grant sums of money towards the maintenance and welfare of children and young persons and of the aged, destitute or infirm;
- (g) to fix tariffs or charges for services rendered in connection with the performance of any of the functions of the Falekaupule;
- (i) to perform any other function, whether similar to those set out in this Schedule or not, conferred upon the Falekaupule by the Minister in writing after consultation with the Falekaupule .

FALEKAUPULE ACT 1997

(Act no 8 of 97)

Explanatory Memorandum

(This memorandum is not part of this Act)

1. Under the Local Government Act (Cap. 19), local government councils are established on each island of Tuvalu and made predominantly responsible for running the island's affairs. The role of the "Falekaupule" (or council of elders) on each island is limited to electing a President for the local council. The main purpose of this Act is to give further and comprehensive statutory recognition for the "Falekaupule" and to vest in them greater control over the activities and affairs of the islands by transferring to them the functions of the local government councils and making them more responsible for each island's affairs. A second purpose of the Act is to confer greater autonomy on the islands in the conduct of their affairs, as regards finance, staff and decision-making generally.

2. To give the council of elders more responsibility for the affairs of each island the Act -

a) establishes 8 Falekaupule with areas of authority corresponding to the islands of Tuvalu (see section 4 and Schedule 1); (Falekaupule is the Tuvaluan word for a council of elders.)

b) confers on the Falekaupule the functions at present conferred on local government councils (see section 40 and Schedule 3);

c) incorporates the elected councils as Kaupule but makes them the agents or executive arms of the Falekaupule - (see sections 6 and 39); and

d) requires the Kaupule to obtain the approval of the Falekaupule before making various decisions - see e.g. making bye-laws (section 54); adopting a budget (section 64); levying rates (section 84(1)); appointment of permanent staff (section 101); acceptance of gifts (section 42); and investment of funds (section 70).

3. To achieve greater autonomy for the islands, the Act -

a) empowers Kaupule to employ their own staff, rather than having Government officers working for them - (see Part IX); and

b) gives more financial resources to the Kaupule - (see section 58).

4. The Act retains certain powers for the Minister so that a degree of uniformity can be maintained in such matters as salaries, rates etc. In most cases, however, the Minister's powers can only be exercised after consultation with the Falekaupule (see e.g. sections 31, 72 and 109).

5. The Act retains the existing composition of Kaupule i.e. 6 members elected by voters on each island (section 8), and the existing procedure for the election of a president of the Kaupule (section 18). The post of president is renamed as Pule o Kaupule and the holder is given the function of liaising with the Minister on the one hand and with the head of the Falekaupule (called either a “Tupu”, “Ulu Alikī”, “Ulu Fenua” or “Pule Fenua”) on the other - (see section 125).

6. Many of the existing provisions of the Local Government Act are retained but the language has been modernised and simplified and the opportunity has been taken to clarify some provisions. See the provisions relating to qualification of Kaupule members (sections 9 to 12), qualifications for voting (sections 14 to 16), the conduct of meetings (sections 21 to 34), the appointment of committees (sections 35 to 38), the legal powers of Kaupule (sections 41 to 52), the role of the Auditor-General (sections 73 to 82), the assessment and collection of rates (sections 83 to 98) and legal provisions generally (sections 111 to 120). The maximum fines for offences have been doubled, in line with inflation since they were originally prescribed.

7. Some provisions of the Act are new but essentially technical for example. those relating to the functions of the Pule o Kaupule (section 19), standing committees (section 36), the acquisition of land (section 48), the procedure for appointments (section 102), the status of Kaupule officers and employees (section 104) and the payment of salaries (section 108). There are however two significant innovations. Section 121 provides for an annual Falekaupule Assembly of all adults on an island, not limited to the elders. This will consider the annual budget, including rating proposals and any other matters brought up to it. Section 122 gives statutory recognition to the local development plan for each island, on the basis of which development funds can be made available not only from the Government but from overseas.

8. The Act provides for the progressive repeal of the Local Government Act (section 131) and makes various saving and transitional provisions - for example as to council property and staff (section 6(2)), as to the elected members (section 17), and as to existing regulations and bye-laws (subsections 131(3)-(5)).

I certify that this is a correct copy of the Bill passed by the Parliament of Tuvalu on 12th December, 1997.

Paulson Panapa
CLERK TO PARLIAMENT

I certify that this Bill is in order for the consent of the Governor-General as representative of the Head of State.

Feleti P Teo
ATTORNEY-GENERAL

Published by exhibition at the public office of the government this December,
1997.

Saufatu Sopoanga
ACTING SECRETARY TO GOVERNMENT